***THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

AND

***THE HON'BLE MR JUSTICE CH.S.R.K. PRASAD**

+WRIT PETITION NOS. 17997 of 2004, 18059 OF 2004 &

18132 OF 2004

%WEDNESDAY THE WENTY FOURTH DAY OF NOVEMBER

TWO THOSUAND AND FOUR

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+WRIT PETITION NO : 17997 of 2004

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#S. PRASAD REDDY

..... PETITIONER

VS.

$1. THE COLLECTOR AND DISTRICT MAGISTRATE, ANANTAPUR

2. THE GOVERNMENT OF ANDHRA PRADESH REP. BY ITS
CHIEF SECRETARY, HYDERABAD.
3. THE SUPERINTENDENT OF CENTRAL PRISON, CHERLAPALLY,
RANGA REDDY DISTRICT.

.....RESPONDENTS

WRIT PETITION NO : 18059 of 2004

#M. VENKAT RAMI REDDY

..... PETITIONER

VS.

$1. THE COLLECTOR AND DISTRICT MAGISTRATE, ANANTAPUR

2. THE PRINCIPAL SECRETARY FOR HOME, SECRETARIATE,

HYDERABAD.

3. THE SUPERINTENDENT, CENTRAL PRISON, CHERLAPALLI,

RANGA REDDY DISTRICT.

.....RESPONDENTS

WRIT PETITION NO : 18132 of 2004

B. PADMA PRIYA.

..... PETITIONER

VS.

$1. THE COLLECTOR AND DISTRICT MAGISTRATE, O/O DISTRICT COLLECTOR, ANANTAPUR, ANANTAPUR (DISTRICT).

2. THE CHIEF SECRETARY , GOVT. OF ANDHRA PRADESH, SECRETARIATE, HYDERABAD.

3. THE SECRETARY, DEPT. OF GENERAL ADMINISTRATION, GOVT. OF A.P. SECRETARIATE, HYDERABAD.

4. THE SUPERINTENDENT, CHERLAPALLI CENTRAL JAIL,

HYDERABAD.

.....RESPONDENT(S)

!COUNSEL FOR THE PETITIONER:MR.C.PADMANABHA REDDY

^COUNSEL FOR THE RESPONDENT:ADVOCATE GENERAL

<GIST:

<HEAD NOTE:

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1. A.I.R. 1974 S.C. 2154
2. (1984)1 S.C.C. 25
3. (2004)3 S.C.C. 75
4. 2004(1) Decisions Today (S.C.) 906
5. 1992 SUPP.(1) S.C.C. 496
6. 2000(8) S.C.C. 630
7. 1995 S.C.C. (CRL.) 454
8. 2004 CRL.L.J. 3153
9. AIR 1981 S.C. 431
10. AIR 1975 S.C. 1516
11. air 1984 S.C. 211
12. (1986)4 S.C.C. 378
13. 1989 SUPP.(1) S.C.C. 322
14. (1989)3 S.C.C. 321
15. (1989) SUPP.(2) S.C.C. 576
16. (1992)2 S.C.C. 177
17. AIR 1982 S.C. 1315
18. 1997(2) A.L.T. (Crl.) 146(D.B) A.P.

19. (1970)1 S.C.C. 98=1970 S.C.C. (Cri.)67

20. (1999)5 S.C.C. 613

21. AIR 1994 S.C. 165

22. AIR 1974 S.C. 2337

23. AIR 1982 S.C. 1143

24. AIR 1972 S.C. 2259

25. AIR 1972 S.C. 1656

26. (1973)1 S.C.C. 393

27. (1974)4 S.C.C. 504

28. AIR 1972 S.C. 2256

29. AIR 1973 S.C. 897

30. 1994(3) A.L.T. 467(D.B)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE CH.S.R.K. PRASAD

WRIT PETITION Nos: 17997/2004, 18059/2004, 18132/2004

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1. WRIT PETITION NO : 17997 of 2004

Between:

S. Prasad Reddy S/o Veera Reddy, R/o Srinivasapuram,

Tadipatri Town, Anantapur District.

..... PETITIONER

AND

1. The Collector and District Magistrate, Anantapur

2. The Government of Andhra Pradesh rep. by its

Chief Secretary, Hyderabad.

3. The Superintendent of Central Prison, Cherlapally,

Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas corpus under Art 226 of the Constitution of India directing the Respondents to produce the detenu Sangati Ravindra Reddy @ Potti Ravi S/o Veera Reddy, now detained in Central Prison, Cherlapaly before the Hon'ble High Court and he may be ordered to be released forthwith after declaring that his detention is illegal and void.

2. WRIT PETITION NO : 18059 of 2004

Between:

M. Venkat Rami Reddy S/o Peddi Reddy,

R/o Sanjeevapuram village, B.K. Samudram

Mandal, Anantapur District.

..... PETITIONER

AND

1. The Collector and District Magistrate, Anantapur

2. The Principal Secretary for Home, Secretariate, Hyderabad.

3. The Superintendent, Central Prison, Cherlapalli,

Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Habeas corpus under Art 226 of the Constitution of India directing the respondents to produce Mukkamula Chinna Venkata Reddy S/o Peddi Reddy now detained in Central Prison, Cherlapaly before the Hon'ble High Court and may be ordered to release forthwith declaring that his detention is illegal and void.

3. **WRIT PETITION NO : 18132 of 2004**

Between:

B. Padma Priya W/o B. Jagadeeswara Reddy R/o Near Rice Godown, Putlur Road, Tadipatri, Anantapur District.

..... PETITIONER

AND

1. The Collector and District Magistrate, O/o District Collector,

Anantapur, Anantapur (District).

2. The Chief Secretary, Government of Andhra Pradesh, Secretariat,

Hyderabad.

3. The Secretary, Dept. of General Administration, Government of

Andhra Pradesh, Secretariat, Hyderabad.

4. The Superintendent, Cherlapalli Central Jail, Ranga Reddy District,

Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Habeas corpus under Art 226 of the Constitution of India directing the respondents to produce the detenue Sri B. Jagadeeswara Reddy, Tadipatri detained in C.No. 5001-7/MC/2004, dated: 17.9.2004 now lodged in Charlapally Central Prison, Hyderabad before the Hon'ble High Court and he may be released forthwith after declaring the detention is illegal and invalid and unconstitutional.

Counsel for the Petitioner:MR.C.PADMANABHA REDDY

(In all the cases)

Counsel for the Respondent: THE ADVOCATE GENERAL

(In all the cases)

The Court made the following :

COMMON JUDGMENT:

(per G. Bikshapathy J)

1. Common questions of law are raised in these Writ Petitions and hence they are being disposed of by a common judgment, however, keeping in view the incidents in each individual case.

2. The Collector and the District Magistrate, Anantapur by virtue of the powers vested in him under Section 3 of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act (1 of 1986) (for brief the 'Act'), passed Orders of detention. Consequently, writs of habeas corpus came to be filed by the petitioners on behalf of detenus seeking production and release of the detenus after holding the Order of detention as illegal and invalid.

3 . The learned Senior Counsel appearing for the petitioners and the learned Advocate General have elaborately and minutously argued most of the general issues arising out of preventive detention Orders. Therefore, it became inevitable for us to deal with each and every contention in extenso.

4. The learned Senior Counsel appearing for the petitioners Mr. C. Padmanabha Reddy advanced the following common submissions in the Writ Petitions:

1. The grounds referred to in the detention Order are stale and not proximate to the Order of detention. There is also no rationale nexus to the conclusions drawn in the detention Order.

2. The detention orders were issued on vague, irrelevant and extraneous grounds.

3. The acts alleged to have been committed by the detenu would not fall within the wider spectrum of “Public Order”, but they are merely “Law and Order” for which preventive detention measures cannot be invoked.

4. Detenu did not fit in the definition of “Goonda” as defined under Section 2(g) of the Act, since the offence alleged to have been committed by the detenu would not fall within the Chapter XVI, XVII and XXII of the I.P.C.

5. The grounds of detention were issued on the ground of political rivalry, unless it falls within the mischief of public Order, the detention based on political rivalry and consequential illegal acts cannot be taken into consideration.

He refers to number of decisions, which would be discussed infra.

5. Per contra, the learned Advocate General tracing the genesis of the Act submits that the very intention of the Act is to prevent the person from acting in any manner

prejudicial to the maintenance of public order. In such a situation, the Order of detention cannot be attacked on the premise of stale and irrelevant grounds in the Order of detention. These grounds are only taken into consideration for assessing the propensity of the detenu and the mere reference would not invalidate the Order of detention. Making submission on the expression "**Public Order**" and "**Law and Order**", the learned Advocate General, however, submits that even though there is marked difference between these two expressions, yet, they have to be interpreted keeping in view the nature of activities of the detenu and its affect on the community at large. He submits that the issue relating to "**Law and Order**" at times takes the colour of "**Public Order**" also and therefore, each case has to be decided on its own merits. Submitting the contentions with regard to the definition of the expression "Goonda", the learned counsel would submit that even though the offences punishable under **Chapter XVI, XVII and XXII of IPC** are *sine qua non* for bringing a person within the definition of "**Goonda**", but reference to any ancillary act, being an offence under the other provisions of Indian Penal Code or the other enactment is not a bar and mere reference would not vitiate the detention Order. The definition does not totally prohibit from taking into consideration the illegal activities of the detenu, which fall within the category of offences under other provisions of Indian Penal Code or other enactments. Reacting to the ground of political rivalry, the learned Advocate General submits that large-scale horror and looting and damage to the property of the citizens are being resorted to by the political rivalries and when once it is found that their act falls within the parameters of the public Order, it is immaterial whether act was done on account of the political rivalry or otherwise, it is always open for the detaining authority to invoke the provisions of the Act to maintain the peace and harmony in the area. He also refers to the decisions of the Supreme Court, which are discussed hereinafter.

6. After having heard the learned Senior Counsel for the petitioners and also the learned Advocate General at length, we are inclined to deal with each contention individually and thereafter apply the principles to the facts of each case with regard

to the sustainability of the Orders of detention.

7. Before dwelling into the respective contentions, we feel it appropriate to refer to the provisions of the Act. The Act entered into force with effect from 28.2.1986. It is an Act to provide for preventive detention of **Bootleggers, Dacoit, Drug-offender, Goonda, Immoral Traffic Offender or Land-grabber** for preventing their dangerous activities prejudicial to the maintenance of the public Order. The Preamble of the Act reads thus:

> "Whereas public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as **bootleggers, dacoits, drug offenders goondas, immoral traffic offenders and land grabbers**.
>
> And whereas having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which the dangerous activities are being clandestinely organised and carried on in violation of law by them, as **bootleggers, dacoits, drug offenders, goondas, immoral traffic offenders or land grabbers** in the State of Andhra Pradesh and particularly in its urban areas, it is necessary to have a special law in the State of Andhra Pradesh to provide for preventive detention of these six classes of persons and for matters connected therewith"

Six classes of persons were defined in the Act. However, since we are only concerned with the definition of Goonda, the same is extracted below:

> "**Goonda**" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under **Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code**."

Section 3 empowers the competent authority to issue the detention Order which reads thus:

> "**Power to make orders detaining certain persons:-** The Government may, if satisfied with respect to any **boot legger, dacoit, drug offender, goonda, immoral traffic offender or land grabber** that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is

necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:

Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

The expression "**acting in any manner prejudicial to the public order**" is defined in Section 2(a) of the Act, which reads thus:

"**Acting in any manner prejudicial to the maintenance of public order**" means when a **boot legger, a dacoit, a drug offender, a goonda, an immoral traffic offender or a land grabber** is engaged or is making preparations for engaging in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

Therefore, in order to invoke the provisions of the Act, it is necessary that the person

or persons concerned shall not only fall within the six categories referred to above, but also answer to the expression acting in any manner prejudicial to the maintenance of the public order.

8. Tracing out the necessity for preventive detention and its basic concepts, the Supreme Court in HARADHAN SAHA Vs. STATE OF WEST BENGAL while dealing with the constitutional validity of the Maintenance of Internal Security Act, 1991 observed thus:

> "The essential concept of preventive detention is that detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove (sic) (on proof of) his quite and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent."

The prosecution and detention are different. The authorities are different. In preventive detention the past acts are necessarily the material for inference about the future course of probable conduct on the part of the detenu. The Supreme Court laid down 5 principles to be kept in view in dealing with the preventive detentions, which reads thus:

> "**First**, merely because a detenu is liable to be tried in a criminal Court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. **Second**, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. **Third**, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities

which jeopardise the security of the State or the public order. **Fourth**, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order**. Fifth**, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances. (See: HARADHAN SAHA Vs. THE STATE OF WEST BENGAL (AIR 1974 S.C. 2154)".

9. In THE DISTRICT MAGISTRATE, NOWGONG Vs. SARAT MUDOI, the Supreme Court observed thus:

> "The basis for an order of preventive detention is the reasonable prognosis of the future behaviour of the person based upon his past conduct. It is open to the detaining authority to take note of the past conduct of a detenu and apprehending repetition of such conduct in future an order of detention can be made with a view to preventing such action."

10. In UNION OF INDIA Vs. AMRIT LAL MANCHANDA, the Supreme Court observed in para 9 thus:

> "Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meaning provide the justification for the laws of prevention detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial

base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself with life, liberty and all those who are enjoying with us thus absurdly sacrificing the end to the needs." This, no doubt is the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other."

11. Again in THE COMMISSIONER OF POLICE Vs. SMT. C. ANITA, the Supreme Court reiterated the same principles.

12. The Supreme Court has also highlighted the area of interference under Article 226 and also 32 of Constitution of India in respect of the preventive detention Orders. One of the leading judgments on the subject is ADDITIONAL SECRETARY TO THE GOVT. OF INDIA AND OTHERS. V. SMT. ALKA SUBHASH GADIA. In para 12 of the said judgment it was observed by the Supreme Court as under:

"**12.** This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the detention - punitive or preventive - is shown to have been made under the law so made for the purpose. This is to point out the limitations, which the High Court and the Supreme Court have to observe while excising their respective jurisdiction in such cases. These limitations are normal and well known and are self-imposed as a matter of prudence, propriety, policy and practice and are observed while dealing with cases under all laws. Though the Constitution does not place any restriction on these powers, the judicial decision have evolved them over a period of years taking into consideration the nature of the legislation or of the order or decision complained of, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought, etc. To illustrate these limitations, (i) in the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not as Courts of appeal or revision, correct mere errors of law or of facts; (ii) the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by

statute. Where it is open to the aggrieved person to move another Tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the writ jurisdiction, permit the machinery created by the statute to be by-passed; (iii) it does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed; (iv) it does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by the extraneous considerations or is made in contravention of the principles of natural justice of any constitutional provision; (v) the Court may also intervene where (a) the authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed, or (b) when the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose; (vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief. If the Court is of opinion, that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merit and if the Court finds that there is an infringement of the petitioner's legal rights, it will grant final relief but will not dispose of the petition only by granting interim relief; (vii) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could not, or by omitting to consider matters which it sought to have, the Court interferes with the resultant order; (viii) In proper cases the Court also intervenes when some legal or fundamental right of the individual is seriously threatened, though not actually invaded."

13. In SAYED TAHER BAWAMIYA Vs. JOINT SECRETARY TO GOINVERMENT OF INDIA, it was observed by the Supreme Court as follows:

"This Court in ADDITIONAL SECRETARY TO THE GOVT. OF INDIA AND OTHERS. V. SMT. ALKA SUBHASH GADIA (1992 Supp.1 S.C.C. 496) was also concerned with a matter where the detention order had not been served, but the High Court had entertained the petition under Article 226 of the Constitution. This Court held that equitable jurisdiction under Article 226 and Article 32 which is discretionary in nature would not be exercised in a case

where the proposed detenu successfully evades the service of the order. The Court, however, noted that the Courts have the necessary power in appropriate case to interfere with the detention order at the pre-execution stage but the scope for interference is very limited. It was held that the Courts will interfere at the pre-execution stage with the detention orders only after they are prima facie satisfied : (i) that the impugned order is not passed under the Act which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds, or (v) that the authority which passed it had no authority to do so. As we see it, the present case does not fall under any of the aforesaid five exceptions for the Court to interfere. It was contended that these exceptions are not exhaustive. We are unable to agree with this submission. Alka Subhash's case (supra) shows that it is only in these five types of instances that the Court may exercise its discretionary jurisdiction under Article 226 or Article 32 at the pre-execution stage. The appellant had sought to contend that the order which was passed was vague, extraneous and on irrelevant grounds but there is no material for making such an averment for the simple reason that the order of detention and the grounds on which the said order is passed has not been placed on record inasmuch as the order has not yet been executed. The appellant does not have a copy on the same, and therefore, it is not open to the appellant to contend that the non-existent order was passed on vague extraneous or on irrelevant grounds."

14. Having stated the necessity, purpose, objectives of the Act vis-à-vis the area of interference by the Supreme Court and High Court under Article 32 and 226 of Constitution of India respectively, let us consider the grounds of attack.

1) Stale Grounds:

15. A reference is made to decision of the Supreme Court reported in MUSTAKMIYA JABBARMIYA SHAIKH Vs. M.M. MEHTA, COMMISSIONER OF POLICE. The detention Order was issued on 19.8.1994 on the ground that the detenu was indulging in criminal and anti-social activities in the areas of Shahpur, Patwasheri area of Teen Darwaza and Sardar Garden area of Ahmedabad city by keeping firearms, beating and assaulting innocent citizens in public and creating an atmosphere of fear and terror in the said areas. It is also stated that the persons, who made a complaint requested the authorities not to reveal their names and identity for fear of retaliation by the detenu. The petitioner was detained on the ground that he is

anti-social element and dangerous person within the meaning of Section 2© of Gujarat Prevention of Anti-Social Activities Act, 1985. The expression "dangerous person" was defined as follows:

> **"Section 2© 'dangerous person'** means a person, who either by himself or as a member or leader of a gang habitually commits, or attempts to commit or abets the commission of any of the offences punishable under **Chapter XVI or Chapter XVII of the Indian Penal Code** or any of the offences punishable under **Chapter V of the Arms Act, 1959.**"

Five incidents were referred to in the Order of detention and the incident No.1 was on dated: 24.4.1993 and the four other incidents are from April, 1994 to August, 1994. The Supreme Court while referring to the Act, observed that the object of the Act is to prevent the crime and protect the Society from the anti-social elements and dangerous characters. The Act is intended to deal with habitual criminal dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. However, the Supreme Court cautioned that the power under the Act to detain a person should be exercised with restrain and great caution. Referring to the incident that had taken place on 24.4.1993 with reference to other incidents that the incident, which occurred on 24.4.1993 and the detention Order was passed on 19.8.1994 after a lapse of 16 months, the Supreme Court held that this long lapse of time he detention orders looses its significance because the said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of pubic Order and such a stale incident cannot be construed as justifiable ground for passing an Order of detention.

16. A Full Bench of this High Court in which myself (GBJ) was also a party, was required to answer the following reference in S. JAYAMMA Vs. COLLECTOR & DISTRICT MAGISTRATE, CUDDAPAH, while dealing with the provisions of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drugs Offenders,

> "Can the detaining authority refer past events of the detenu for the purpose of ascertaining the propensity of the detenu of his involvement while passing the detention Order?"

The Full Bench referred to the decision of the Supreme Court reported in SMT. SHALINI SONI Vs. UNION OF INDIA, wherein the Supreme Court held thus:

> "It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

A reference was also made to the decision of the Supreme Court reported in JAGAN NATH BISWAS Vs. STATE OF WEST BENGAL, wherein the detention Order was challenged on the ground of staleness. Three incidents were referred to while issuing detention order namely November, 1971, December, 1971, August 1972 in the Order of detention dated: 27.2.1973. Referring to staleness, the Supreme Court observed thus:

> "The incidents themselves look rather serious but also stale, having regard to the long gap between the occurrences and the Order of detention. One should have expected some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction. In the present case, counsel for the State Shri G.S. Chatterjee, took time to furnish an explanation as to why there was such a long delay for the District Magistrate to pass the Order of detention. Unfortunately, we are no wiser today than at the previous hearing. In short, we are not taken into confidence by the District Magistrate as to why there should have been such an inordinate delay. We, in turn, therefore, are not satisfied about the bona fides of the subjective satisfaction of the District Magistrate."

In KAMALAKAR PRASAD Vs. STATE OF M.P., it was reiterated by the Supreme Court that there should be proximity in time to provide rational nexus between the incidents relied on and the satisfaction arrived at. Unexplained long delay would be

fatal to the plea of subjective to satisfaction. The Supreme Court observed thus:

> "It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an Order of detention under Section 3(2) of the Act. Nor it is open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention."

However, the assistance was sought by the learned Advocate General from the decision of the Supreme Court reported in SURAJ PAL SAHU Vs. STATE OF MAHARASHTRA, wherein the Supreme Court observed that where the offences in respect of which detenu is accused are so interlinked and continuous in character and are of such nature that they affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the Order being passed for preventive detention. The issue before the Supreme Court arose out of a detention Order passed under Section 3(2) of the National Security Act, 1980.

17. Therefore, referring to the decisions of the Supreme Court, the Full Bench observed that the relevancy and proximity of time are sine qua non for successfully sustaining the Order of detention. No hard and fast rule can be fixed and each case has to be decided on its own merits. The Supreme Court considered the gap of 16 months, the detention Order as stale ground and set aside the Order of dismissal.

CONCLUSIONS:

18. The proximity in time should be guiding factor to provide a rationale nexus between the incident relied on and the satisfaction arrived at, except when the offences alleged to have been committed by the detenu are so interlinked and continuous and are of such a nature that they affect the community at large continuously in case of supply of essential commodities or jeopardising the security of the State or maintenance of public order. Staleness can neither form a ground by itself nor can be referred to for arriving at a subjective satisfaction.

VAGUE, IRRELEVANT AND EXTRANEOUS GROUNDS:

19. On this aspect of the matter, there are number of decisions of the Supreme Court with reference to similar provisions in Gujarat Prevention of Anti-Social Activities Act, 1985. In PIYUSH KANTILAL MEHTA Vs. COMMISSIONER OF POLICE, the allegations against the detenu were that he, his servants and his associates were indulging in the sale of foreign liquor in certain areas in Ahmedabad city, indulging in use of force and violence and also beating innocent citizens by which an atmosphere of fear was created and thereby causing hindrance to the maintenance of public order. It was also alleged that he was showing dangerous weapons to the citizens and creating an atmosphere of fear while carrying illegal liquor business and that consequently, the people in the respective areas were feeling insecure for their lives and their properties. It was also alleged that when action was taken against him under an ordinary law, he was released on bail and after that also he continued his illegal and antisocial activities. A two Judges Bench of the Supreme Court held that the allegations against the detenu in that case were very general in character without reference to any particular incident or incidents. After referring to PUSHKAR MUKHERJEE Vs. STATE OF WEST BENGAL (1969) 1 S.C.C. 10), the Supreme Court held as follows:

> ".....It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him, but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a boot legger.....but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless.....his activities as a boot-legger affect adversely or are likely to affect adversely the maintenance of public order....."

20. RASHIDMIYA Vs. POLICE COMMISSIONER also arose under the Gujarat Prevention of Anti-Social Activities Act, 1985. After referring to various provisions of that Act, which are similar to the provisions of the Act, the Supreme Court held as follows:

> "……A conjoint reading of Section 2(b) and Section 3(4) with the explanation annexed thereto clearly spells out that in order to clamp an Order of detention upon a "bootlegger" under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2(b) but also that the activities of the said bootlegger affect adversely or are likely to affect adversely the maintenance of pubic Order. Reverting to the facts of this case, the vague allegations in the grounds of detention that the detenu is the main member of the gang of Abdul Latif, Abdul Wahab Shaikh indulging in bootlegging activities and that the detenu is taking active part in such dangerous activities, are not sufficient for holding that his activities affected adversely or were likely to affect adversely the maintenance of public Order in compliance with sub-section (4) of Section 3 of the Act that the activities of the detenu have caused harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health as per the explanation to Section 3(4)."

21. To the same effect is the definition of the Supreme Court in OMPRAKASH Vs. COMMISSIONER OF POLICE, which also arose under that Act. The allegation against the detenu in that case was that he has a bootlegger "was engaged in unlawfully storing and selling the country made and foreign liquor at Dhabawali Chawl, Saraspur, Ahmedabad through himself and his associates and was also causing injuries to innocent persons of that locality by using lethal weapons thereby unleashing a reign of terror in the said area……." The Supreme Court held that the material available on record was not sufficient and adequate for holding that the alleged prejudicial activities of the detenu affected adversely or were likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of that Act.

22. The two cases in which the Supreme Court refused to interfere and upheld the detention are also relevant because they illustrate the activities which amount to a conduct prejudicial to the maintenance of public Order. The first case is HARPREET KAUR Vs. STATE OF MAHARASHTRA, which arose under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981, which contained provisions similar to those of the At. After referring to the substance of the grounds of detention of the petitioner in that case, a two Judges

Bench of the Supreme Court held as follows:

> "The substance of the grounds on which detention has been ordered is that the detenu is a bootlegger and in furtherance of his activities and to escape from the clutches of law, he even tried to run over, by his speeding vehicle, the police party, which tried to signal him to a stop, exhorting all the time that he would kill anyone who would come in his way. He continued to drive in a reckless speed and dashed against a pedestrian causing injuries to him, where again he had exhorted that anyone who would come in his way would meeting his death.? Four witnesses – A, B, C, D – who agreed to give statements to the police on conditions of anonymity, clearly stated that they would not depose against the detenu for fear of retaliation as the detenu had threatened to do away with anyone who would depose against him. The evidence of these witnesses shows that the detenu was indulging in transporting of illicit liquor and distributing the same in the locality and was keeping arms with him while transporting liquor. The activities of the detenu, therefore, were not merely "bootlegging" as was the position in OMPRAKASH Vs. COMMISSIONER OF POLICE (1989 SUPP.(2) S.C.C. 576), RASHIDMIYA Vs. POLICE COMMISSIONER (1989) 3 S.C.C. 321, and PIYUSH KANTILAL MEHTA Vs. COMMISSIONER OF POLICE (1989 SUPP. (1) S.C.C. 322) cases, but went further to adversely affect the even tempo of the Society by creating a feeling of insecurity among those who were likely to depose against him as also the law enforcement agencies. The fear psychosis created by the detenu in the witnesses was aimed at letting the crime go unpunished which has the potential of the society, and not merely some individual, to suffer. The activities of the detenu, therefore, squarely fall within the deeming provision enacted in the Explanation of Section 2(a) of the Act, and it therefore, follows as a logical consequence that the activities of the detenu were not merely prejudicial to the maintenance of 'law and order' but were prejudicial to the maintenance of 'public order'. In that case, the Supreme Court also gave the following test to find out whether the objectionable activities upon which the order of detention was grounded fell under the classification of being prejudicial to 'public order' or belonged to the category of being prejudicial only to 'law and order':

> > "From the law laid by this Court, as noticed above, RAM MANOHAR LOHIA Vs. STATEOF BIHAR (AIR 1966 S.C. 740), ARUN GHOSH Vs. STATE OF WEST BENGAL (1970 (1) S.C.C. 98), MADHU LIMAYE Vs. SUB-DIVISIONAL MAGISTRATE (1970 (3) S.C.C. 746), KANU BISWAS Vs. STATE OF WESTBENGAL (1972(3) S.C.C. 831), ASHOK KUMAR Vs. DELHI ADMINISTRATION(1982(2) S.C.C. 403), and SUBHASH BHANDARI Vs. DISTRICT MAGISTRATE, LUCKNOW (1987(4) S.C.C. 687), it follows that it is the degree and extent of the reach of the objectionable activity upon the Society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner

likely to cause disturbance to ‘public order’.....Facts of each case have, therefore, to be carefully scr8tinised to test the validity of an Order of detention.”

The Supreme Court further held in that case as follows:

“Crime is a revolt against the whole society and an attack on the civilization of the day. Order is the basic need of any organised civilized society and any attempt to disturb that order affects the society and the community. The distinction between breach of 'law and order' and disturbance of 'public order' is one of degree and the extent of reach of the activity in question upon the society. In their essential quality, the activities which affect law and order' and those which disturb public order' may not be different but in their potentiality and effect upon even tempo of the society and public tranquillity there is a vast difference. In each case, therefore, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of 'public order' or only 'law and order'.

There is no gainsaying that in the present state of law, a criminal can be punished only when the prosecution is able to lead evidence and prove the case against an accused person beyond a reasonable doubt. Where the prosecution is unable to lead evidence to prove its case, the case fails, though that failure does not imply that no crime had been committed. Where the prosecution case fails, because witnesses are reluctant on account of fear of retaliation to come forward to depose against an accused, obviously, the crime would go unpunished and the criminal would be encouraged. In the ultimate analysis, it is the society, which suffers. Respect for law has to be maintained in the interest of the society and discouragement of a criminal is one of the ways to maintain it. The objectionable activities of a detenu have ' therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of 'public order' and are not merely prejudicial to the maintenance of 'law and order’.”

The second case is KAMALABI Vs. COMMISSIONER OF POLICE (1993(3) S.C.C. 384), which arose under the National Security Act. On the facts of that case, a two Judges Bench of the Supreme Court held as follows:

“When the Police Sub-Inspector was patrolling, he saw people gathered near detenu's stable and on seeing him they tried to run

> away. The S.I. caught hold of one of them who admitted that he was selling illicit liquor in the detenu's stable and thereafter the S.I. took search of the stable and found liquor bottles. When the S.I. was about to take the arrested person and the liquor bottles, the detenu and his associates came there, questioned the S.I. and forcefully broke the liquor bottles on the spot. When the S.I. told them that he was performing his duty, the detenu threatened him that they will finish him if he does not act according to their wishes. So saying the detenu caught hold of the S.I. and surrounded him. The S.I., however, got released and went to the police station. This act and conduct of the detenu was considered to be nothing but display of goondaism, by the detaining authority. We cannot say that this is a stray act affecting law and order. Catching hold of a Sub-inspector and threatening him in a public place like that naturally would have created panic in the locality. We cannot say that the ground has no nexus to the public order……."

23. In DHANANJOY DAS Vs. DISTRICT MAGISTRATE, the detention Order was passed under National Security Act. Two grounds were raised, which are extracted below:

> "The order of detention was challenged by the appellant on two grounds: (1) that the grounds of detention were vague, and (2) that the facts narrated in the grounds related to law and order situation and not to public order. The High Court repelled both the grounds and dismissed writ petition by its order dated 23rd of February, 1982. The High Court, however, granted a certificate for leave to appeal to this Court."

Among other grounds of detention, the 1st ground reads thus:

> "3(1). Sri Dhananjoy Das, aged about 50 is the President of Purbanchalia Lok Parishad, Tezpur Unit. He is a contractor by profession. Sri Das has been playing a leading part in the current agitation on foreigners issue in collaboration with other active agitators who are leaders of AASU, Karmachari Parishad and Gana Sangram Parishad by organising bundhs, non-co-operation programme inciting people to violate law from time to time. Such activities have disturbed peaceful, tolerant and harmonious life of society."

The Supreme Court held that 1st ground taken and treated a substantial ground itself, such a ground is vague leading to questioning of the detention Order. However, the Supreme Court held that 1st ground is only a preamble and not an

independent ground. The Supreme Court held in paras 8, 13 and 19 of the judgment thus:

> "**8)** Whether a particular paragraph in the grounds amounts only to a preamble or introduction is to be determined on the facts and circumstances of each case and it is open to the Court to come to its own conclusion whether that paragraph is only an introductory para or contains the grounds on the basis of which the detaining authority had the subjective satisfaction for passing the order of detention.
>
> **13)** The grounds of detention read as a whole leave no room for doubt that paragraph 1 of the grounds of detention was only by way of introduction or as a preamble. In substance. it only indicates the modus operandi adopted by the various organisations to the current agitation on foreigners issue in Assam. The 2nd and 3rd paragraphs of the grounds of detention allege a specific part placed by the appellant in that agitation. On a perusal of grounds of detention as a whole we are satisfied that the view taken by the High Court that the 1st paragraph of the grounds of detention was only a preamble, prelude, or introductory para is correct. If this be the position then the vagueness in the 1st paragraph cannot be made a ground of attack on the impugned order.
>
> **19)** The law is by now well settled that a detenu has two rights under Art. 22 (5) of the Constitution : (1) to be informed, as soon as may be of the grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. Therefore in this view of the legal position if the grounds are vague and indefinite that would amount to an infringement of the second right of the appellant. It is by virtue of the second right that the detaining authority has to supply the material facts on the basis of which subjective satisfaction was derived for passing the order of detention and this is how the facts from which the inference is drawn also become a part and parcel of the grounds. Therefore, the important question is whether grounds Nos. 2 and 3 are so vague as to infringe the second right of the appellant conferred by Art. 22 (5) of the Constitution."

The Supreme Court also considered as to the vagueness of the grounds and

referred to the earlier decisions in paras 23 to 35:

"**23**. Before dealing with this question of vagueness about Paragraphs Nos. 2 and 3 of the grounds we would like to deal with certain authorities which have been cited on behalf of the appellant to indicate what constitutes the grounds of detention. In the **State of Bombay v. Atma Ram Sridhar Vaidya, 1951 SCR 167 : (AIR 1951 SC 157)** the Supreme Court held :

> "Clause (5) of Art. 22 confers two rights on the detenu, namely, first, a right to be informed of the grounds on which the order of detention has been made, and secondly, to be afforded the earliest opportunity to make a representation against the order; and though these rights are linked together they are two distinct rights. If grounds which have a rational connection with the objects mentioned in S. 3 are supplied, the first condition is complied with. But the right to make a representation implies that the detenu should have information so as to enable him to make a representation, and if the grounds supplied are not sufficient to enable the detenu to make a representation, he can rely on the second right. He may if he likes ask for further particulars which will enable him to make a representation. On an infringement of either of these two rights the detained person has a right to approach the court, and even if an infringement of the second right under Art. 22 (5) is alone established he is entitled to be released."

24. As observed earlier it is on account of the second right that it becomes necessary to give facts on which the conclusion is based. By now it is well settled that the grounds of detention constitute the facts also on which the conclusion has been drawn.

25. The learned counsel for the appellant cited various cases by way of example in which in. somewhat similar situation the grounds of detention were branded as vague. In **Chaju Ram v. State of J. and K., (1970) 1 SCC 536: (AIR 1971 SC 263)** the grounds charged the detenu with having conspired with some leaders of Democratic Conference and having incited landless people of R. S. Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place were mentioned. In the facts and circumstances of the case it was held by this Court (para 10):

> "It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be

vague."

26. The next case cited was that of **Gopal Bauri v. District Magistrate, Burdwan (1975) 1 SCC 522 : (AIR 1975 SC 781)**. The grounds which had been furnished to the detenu in that case described the occurrences of two successive days, namely, March 20, and 21, 1973. Ground No. 1 charged the detenu with regard to the incidence of March 20. 1973 that he with other associates committed theft of ball bearings and wheels of the bucket carriages of the rope-way lines near Harishpur village and the supply of sand to the collieries was suspended. Likewise, about the incidence of March 21, 1973 the second ground charged the detenu that he with other associates committed theft of ball bearings and wheels of the bucket carriages from the rope-way lines at Palashbon village causing suspension of supply of sand to the collieries. The detenu was not communicated the names of the particular associates from whose possession recovery of the stolen articles. the subject matter of thefts disclosed in the two grounds, was made and on the facts and circumstances of that case it was found that the grounds of detention were vague.

27. In Dr. Ram Krishan Bhardwaj v. State of Delhi, 1953 SCR 708 : (AIR 1953 SC 318) one of the grounds of detention mentioned was that :

> "You have been organising the movement (Praja Parishad Movement) by enrolling volunteers among the refugees in your capacity as President of the Refugee Association of Bara Hindu Rao."

This ground was held to be vague and even though the other grounds were not vague, the detention was held to be not in accordance with the procedure established by law and was therefore illegal.

28. In Bhupen Deka v. State of Assam, 1981 Cri LJ 1743 (Gauhati) only ground No. 1 was germane to the supplies and services essential to the community. The other grounds did not pertain to maintenance of supplies and services essential to the community. The Court on the facts held that (para 3) :

> " ..... there is nothing in the ground to show disclosure of any material fact as to when, where, how and in what manner the bundhs, picketings, satyagraha had taken place and how and in what manner they affected the supplies and services essential to the community. There is not a single specific date or time of the bundhs, picketings, satyagraha nor is there any indication as to how the "supplies and services" essential to the community were affected." In the circumstances the order of detention was declared invalid and void

on the ground of vagueness.

29. Shri Rangarajan also referred to Kamla Kanhaiyalal Khushalani v. State of Maharashtra, (1981) 1 SCC 748: (AIR 1981 SC 814) to contend that this case has added new dimension to various features of and concept of liberty enshrined in Art. 21. In the above case the Supreme Court observed (para 5) :

> "This Court in **Maneka Gandhi v. Union of India, (1978) 2 SCR 621: (AIR 1978 SC 597)** has widened the horizon of Articles 21 and added new dimensions to various features of and concept of liberty enshrined in Article 21. In view of the decision in the aforesaid case, Art. 22 (5) of the Constitution assumes a new complexion and has to be construed liberally and meaningfully so as to permit the legislature to impose the minimum possible curbs on the precious rights of a citizen. by virtue of preventive detention. If a procedure under Art. 21 has to be reasonable, fair and just, then the words 'effective representation' appearing in Art. 22 (5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the detaining authority in his representation. If the words 'effective representation' are interpreted in an artificial or fanciful, manner, then it would defeat the very object not only of Art. 22 (5) but also of Art, 21 of the Constitution."

30. The Advocate General of Assam, however, on the other hand cited cases in which in similar situations the grounds were not branded as vague. He referred to **Naresh Chandra Ganguli v. State of West Bengal, (AIR 1959 SC 1335) (supra)**. In that case the argument was that the grounds contained in paragraph 4 were vague and indefinite and not enabling the person detained to make his representation. It appeared from the said paragraph that the detenu in that case intended to proceed to Delhi on Oct. 9, 1958 with a view to instigate plans against the personal security of the Prime Minister. The place, date and purpose of the planned nefarious activities had all been stated as clearly as could be expected. The argument, however, was that it was necessary to state the details of the plans hatched in Delhi. This Court dealing with the point observed (Para 13) :

> "There are several answers to this contention. Paragraph 4 has reference to something which was apprehended but lay in the womb of the future. From the nature of the fact that it was not an event which had already happened but what was apprehended to be in the contemplation of the detenu and his associates, if any, no further details of the plan could possibly be disclosed."

Reliance was placed in that case on the **State of Bombay. v. Atma Ram Sridhar Vaidya (AIR 1951 SC 157) (supra)** wherein it was held that vagueness is a relative term. It was observed further (para 13) :

> "Its meaning must vary with the facts and circumstances of each case. What may be said to be vague in one case may not be so in another, and it could not be asserted as a general rule that a ground is necessarily vague if the only answer of the detained person can be to deny it. If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained person to make his representation. it cannot be said that it is vague. Further it cannot be denied that particulars of what has taken place, can be more definitely stated than those of events which are yet in the offing. In the very nature of things, the main object of the Act is to prevent persons from doing something which comes within the purview of any one of the sub-clauses of cl. (a) of S. 3 (1) of the Act."

31. Next reliance was placed on **Masood Alam v. Union of India, (1973) 3 SCR 268: (AIR 1973 SC 897)**. In this case also the order of detention was challenged on the ground of vagueness of some of the grounds. Reference was specially made to the last two lines of ground No. 1 relating to the collection of Rs. 700 for Youth Majlis and to grounds Nos. 2 and 3. In the facts and circumstances of the case this Court held (Para 12) :

> "If the last two lines are read, as they should be, alone with the remaining contents of ground No. 1 it cannot be said that the petitioner was unable to tender his explanation with respect to the allegation contained therein. Quite clearly, the exact point of time and the people from whom small amounts were collected could not possibly be stated with precision. Grounds Nos. 2 and 3, as is clear, contain precise details in the various clauses enumerated therein. According to ground No. 2 the petitioner has extra-territorial loyalties and, therefore, he is a threat to security of India and this conclusion is arrived at on the basis of the instances stated in cls. (a) to (d) which are precise and definite. Similarly, ground No. 3 says that the petitioner has been exciting communal feelings among the Muslims in India and contributing to communal disturbances in Aligarh city and this conclusion is based on instances stated in cls. (a) to (d) which are precise and definite. The instances under both these grounds are relevant and germane to the object which is sought to be achieved by S. 3 of the Act for the purpose of detaining persons who are likely to act in manner prejudicial to the security of the State or maintenance of public order."

32. State of Bombay v. Atma Ram Sridhar Vaidya (AIR 1951 SC 157) (supra) was sought to be distinguished by the Advocate General and referred to the following observations made by the Court:

> "This however does not mean that all facts leading to the conclusion mentioned in the grounds must be conveyed to the detained person at the same time the grounds are conveyed to him. The facts on which the conclusion mentioned in the grounds are based must be available to the Government, but there may be cases where there is delay or difficulty in collecting the exact date or it may not be convenient to set out all the facts, in the first communication. If the second communication contains no further conclusion of fact from facts, but only furnishes all or some of the facts on which the first mentioned conclusion was founded it is obvious that no fresh ground for which the order of detention was made is being furnished to the detained person by the second communication which follows sometime after the first communication."

33. Next reliance was placed on **Bidya Deb Barma v. District Magistrate, Tripura, Agartala, (1969) 1 SCR 562 (AIR 1969 SC 323)**. In that case also the impugned order was challenged on the ground of vagueness, inasmuch as the ground did not give any details since no particulars of time, place and circumstances had been mentioned and relevant and irrelevant matters had also been included. In the circumstances of the case this Court negatived the contention and observed (Para 13) :

> "The grounds begin by stating generally what the activities were. They consisted of instigation of tribal people to practise jhuming and preventing the authorities from delivering paddy to Government under the procurement schemes. This instigation it is said was through mass and secret meetings and resulted in violent resistance to Government. Having said this the grounds then specify the places where and the dates on which the meetings were held and the date on which and place at which the resistance took place. In our judgment more detailed information was not necessary to give the detenus an opportunity to make their representations."

34. In Vakil Singh v. State of J. and K. AIR 1974 SC 2337 the Supreme Court observed (Para 29) :

> "'Grounds' within the contemplation of S., 8 (1) of the Act means 'materials' on which, the order of detention is primarily based. Apart from conclusions of facts 'grounds' have a factual constituent, also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details. This requirement as to the

communication of all essential constituents of grounds was complied with in the present case. The basic facts, as distinguished from factual details, were incorporated in the material communicated to the detenu. He was told the name of the notorious PAK agent and courier ..... through whom he was supplying the information about the Indian Army. He was informed about the places in Pakistan which he was visiting. He was further told that in lieu of the supply of this information he had been receiving money from Pakistan. Nothing more was required to be intimated to enable him to make an effective representation. The facts which were not disclosed were not basic facts and their non-disclosure did not affect the petitioner's right of making a representation."

35. After analysing the various cases cited on either side we are of the view that the question whether a particular ground is vague will depend on the facts and circumstances of each case because vagueness is a relative term. What may be vague in one case may not be so in similar circumstances of the other case. If the basic facts have been given in a particular case constituting the grounds of detention, which enable the detenu to make an effective representation, merely because meticulous details of facts are not given will not vitiate the order of detention. We have meticulously examined paragraphs 2 and 3 of the grounds of detention and we are satisfied that basic facts have been given to enable the appellant to make an effective representation. Of course, it would have been better if other minute details had also been given."

24. The Division Bench of this Court in AHMED HUSSAIN Vs. POLICE COMMISSIONER, in this regard observed as follows:

"……In the instant case, the material disclosed is quite vague with reference to the persons affected or victimised as also the time and place of such victimisation. This Court has on several occasions indicated that there is a wide gap between law and order and public Order. The criminal offence may relate to the field of law and order but such an offence would not necessarily give rise to a situation of public order. Depending upon peculiar situations an act which may otherwise have been overlooked as innocuous might constitute a problem of public order. Selling of liquor by the petitioner would certainly amount to an offence under the Prohibition Act, but without something more would not give rise to a problem of public order. Similarly, commission of any other criminal offence-even assault or threat of assault – would not bring the matter within the ambit of public Order."

CONCLUSIONS:

25. A survey of the aforesaid decisions, it would establish that the grounds of

detention must be informed to the detenu as soon as possible which lead to the subjective satisfaction of the detaining authority, (b) the grounds furnished shall contain sufficient particulars to enable him to make effective representation which on being considered may obtain relief to him. Inclusion of irrelevant or non-existent ground among other grounds would erode the subjective satisfaction of the detaining authority, the vague and obscure grounds together with definite and clear grounds would vitiate the Order of detention violating art 22(5) of the Constitution of India. (c) Further any ground, which does not furnish any material to make effective representation either to the detaining authority or the appropriate Government also fatal to the detention. They should contain pith and substance of primary facts and not subsidiary facts or evidential details. However, the expression vagueness, irrelevant obscure etc. are relevant terms. What may vague or irrelevant in one case may not be so in similar circumstances of the other case. Therefore, each case has to be considered basing on its own facts and circumstances, keeping in view the object specified in a particular preventive law.

LAW AND ORDER & PUBLIC ORDER

26. In ARUN GHOSH Vs. STATE OF WEST BENGAL, the Supreme Court had an occasion to deal with the distinction between the law and order and public order, the Court observed thus:

> "That public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals, which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality, which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large S. of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different." **(emphasis added)**

27. Again in Again in the case of Piyush Kantilal Mehta's case (13th cited supra), the Supreme Court observed thus:

> "That in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land." **(emphasis added)**

28. In Mustakmiya Jabbarmiya Shaikh's case (7th cited supra), again the said expressions were came to be considered, the Supreme Court observed thus:

> "Further, sub-section (1) of Section 3 of the Act confers power on the State government and a District Magistrate or a Commissioner of Police under the direction of the State government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order". The explanation attached to Ss. (4) of Section 3 reproduced above in the foregoing para contemplates that "public order" shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in Ss. (4) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sub-section (4) of Section 3 also provides that for the purpose of Section 3, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression "public order". A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of

life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality." **(emphasis supplied)**

While referring to the public Order and the law and order, the Supreme Court in AMANULLA KHAN KUDEATALLA KHAN PATHAN Vs. STATE OF GUJARAT, observed thus:

"Mr. Anil Kumar, the learned counsel then urged that even if the activities of the detenu were sufficient to hold him to be a "dangerous person" yet an order of detention can be passed under the Gujarat Act only with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. By virtue of provisions contained in sub-section (4) of Section 3 of the Act a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Thus maintenance of public order is sine qua non for passing an order of detention under Section 3 of the Gujarat Act. But in the case in hand the alleged activities of the detenu are all in relation to violation of the normal criminal law and it has got no connection with the maintenance of public order and, therefore, the order of detention is vitiated. We are unable to appreciate this contention of the learned counsel for the detenu inasmuch as even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not." **(emphasis added)**

29. In Ahmed Hussain's case (18th cited supra), the Supreme Court held thus:

".....In the instant case, the material disclosed is quite vague with reference to the persons affected or victimised as also the time and place of such victimisation. This Court has on several occasions indicated that there is a wide gap between law and order and public Order. The criminal offence may relate to the field of law and order but such an offence would not necessarily give rise to a situation of public order. Depending upon peculiar

situations an act which may otherwise have been overlooked as innocuous might constitute a problem of public order. Selling of liquor by the petitioner would certainly amount to an offence under the Prohibition Act, but without something more would not give rise to a problem of public order. Similarly, commission of any other criminal offence-even assault or threat of assault – would not bring the matter within the ambit of public Order."

30. The Supreme Court in PUSHKAR MUKHERJEE Vs. STATE OF WEST BENGAL (1969(1) S.C.C. 10) and Rashidmiya's case (14th cited supra), held that merely because a bootlegger cannot be preventively detained under the provisions of the Act, but it must be ensured that his activities affected adversely or likely to affect adversely the maintenance of public order. So also in Omprakash's case (15th cited supra).

31. In MRS. U. VIJAYALAKSHMI Vs. STATE OF TAMIL NADU, the Supreme Court was dealing with the Detention Orders passed under T.N. Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gundas, Immoral Traffic Offenders and Slum Grabbers Act (14 of 1982), observed thus:

"The Act was enacted with a view to provide for preventive detention of certain classes of offenders including forest offenders to prevent them from indulging in inter alia activities prejudicial to the maintenance of public order. Section 2(a) defines the expression 'acting in any manner prejudicial to the maintenance of public order'. Clause (iiA) thereof says that in the case of a forest-offender, 'when he is engaged or is making preparations for engaging, in any of his activities as a forest-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order' he can be said to be acting prejudicially to maintenance of public order. The explanation to the definition clause is material and reads as under:

"EXPLANATION:- For the purpose of this clause, (a) public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause (a) directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or ecological system."

The definition of a forest-offender found in Section 2(ee) means a person, who commits or attempts to commit or abets the commission of offence, punishable under certain statutes enumerated therein."

32. In VAKIL SINGH Vs. STATE OF J & K, the Supreme Court discussed the difference between the word law and order and the public order in the following words:

"Lastly we take up the plea raised on behalf of the appellant that the facts alleged in the grounds of detention only make out a case for maintenance of law and order and not of public order. The difference between the expressions 'law and order' and 'public order' has been the subject matter of consideration by this Court on various occasions. In Dr. Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740) (supra) this Court observed:

"What was meant by the 'maintenance of public order' was the prevention of disorder of a grave nature, a disorder which the authority thought was necessary to prevent in view of the emergent situation created by external aggression; whereas the expression 'maintenance of law and order' may mean prevention of disorder of comparatively lesser gravity and of local significance only." **(emphasis added)**

33. Again the distinction was brought in ASHOK KUMAR Vs. DELHI ADMINISTRATION, the Supreme Court observed thus:

"The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order." **(emphasis added)**

37. The situation in Assam is a grave one and the agitation on the issue of foreigners has been going on for years and it has taken an ugly and serious turn, and the statements of facts made in paragraphs 2 and 3 of the grounds of detention in the prevalent

circumstances in Assam relate to the maintenance of public order in view of the law laid down in the above case."

34. In SHRI AMIYA KUMAR KARMAKAR Vs. STATE OF WEST BENGAL, it was held by the Supreme Court thus:

"**6.** As to the proper connotation and the scope of the concept of public order, as distinguished from the concepts of law and order and security of State, the Act furnishes no dictionary. But these three concepts have by now been matters of discussion in several judgments of this Court wherein a clear differentiation of one from the other has been elucidated. Such differentiation was illustrated in some cases by means of three imaginary concentric circles, the narrowest of them being that relating to the security of the State, the next being that pertaining to public order, and the third, the largest, being that pertaining to law and order. (see Lohia v. State, (1966) 1 SCR 709 = (AIR 1966 SC 740). In other cases, the differentiation was sought to be made on the basis of the degree of disorder affecting in one case the community at large, and in other, specific individuals, and only in a secondary sense public order, in other words, between crimes against specific individuals and crimes against the public. Such a distinction appears at first sight attractive by reason of the simplicity of its test, but on a closer examination of it, it fails to cover cases which are marginal and sometimes overlapping. As pointed out in Arun Ghosh v. State of West Bengal, (1970) 3 SCR 288 = (AIR 1970 SC 1228) the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determined of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. On the basis of such a distinction, an attack on an educational institution, in the course of which its registers and other papers were destroyed by acts of arson, was held to fall within the area of public order although it was aimed at an individual entity. (see Nagendra Nath Mondal v. State of West Bengal, (1972) 1 SCC 498 = (AIR 1972 SC 665)). The criterion thus being the potentiality of the act in question or the degree of its impact on members of the community in the locality in which the act in question is committed, examination of ground No.2 from that angle would appear to be more appropriate. **(emphasis added)**

7. The act in ground No.2, no doubt, was an attack resulting in the death of the victim, and though it was said to have been committed by the petitioner along with his associates it would prima facie appear to be an act against a specific individual, involving infraction of law and order only. The act in

question was similar in nature and quality to other such acts committed by one or more individuals against another resulting in the death of the latter. But it was not committed on account of any animus against the victim or for a motive such as personal vendetta. As the ground of detention asserts, it was committed with a view to promote a particular political ideology, that is to say, against one who did not subscribe to that ideology and as a warning against those who did not agree with or subscribe to such ideology. Obviously, it was intended to and did in fact terrorise those who did not conform to that ideology, who out of panic abandoned their normal activities for fear that any one or more of them would be the target of such an attack. Viewed from this angle it is difficult to regard such an act as a mere infraction of law and order, for, such an act committed with such an intent and object and in such circumstances is one which strikes at the normal, orderly life of the community in that locality. Its impact and potentiality thus affect public order in the sense that it was aimed at bringing about disorder and chaos upsetting the even tempo of life in that locality. It is, therefore, not possible to agree with the proposition that it affected the problem of law and order only and was for that reason extraneous or irrelevant to the object specified in S.3 of the Act, in relation to which only a valid order of detention thereunder could be made."

35. In KANU BISWAS Vs. STATE OF WESTBENGAL, the Supreme Court observed thus:

> **"8.** "Public order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?" **(emphasis added)**

36. In Amrit Lal Manchanda's case (3rd cited supra), the Supreme Court held thus:

> "The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention, which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly

involved as distinct from a wide spectrum of public, it could raise problem of law and order only." **(emphasis added)**

37. In BABUL MITRA @ ANIL MITRA Vs. STATE OF WEST BENGAL and MILAN BANIK Vs. STATE OF WEST BENGAL, the Supreme Court held thus:

"**11.** The distinction between 'law and order' and 'public order' has been pointed out succinctly in Arun Ghosh's case (supra). According to that decision the true distinction between the areas of 'law and order' and 'public order' is "one of degree and extent of the reach of the act in question upon society". The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different**". (See Babul Mitra alias Anil Mitra v. State of West Bengal and Ors. (1973 (1) SCC 393, Milan Banik v. State of West Bengal (1974 (4) SCC 504).**

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". [See Kuso Sah v. The State of Bihar and Ors. (1974 (1) SCC 185, Harpreet Kaur v. State of Maharashtra (1992 (2) SCC 177, T.K. Gopal v. State of Karnataka (2000 (6) SCC 168, State of Maharashtra v. Mohd. Yakub (1980 (2) SCR 1158)" **(emphasis added)**

CONCLUSIONS:

38. Therefore, from the aforesaid decisions, it is clear that there is a mark definition

between the law and order and the public order. The potentiality of the act in question and the degree of its impact on the members of the community in the locality in which the act was committed are some of the instances, which will fall in the category of public Order. It also embraces the acts committed with an intention and object to strike at the normal and orderly life of the community in the locality.

39. A mere infraction of law are stray and unorganised crimes of theft and assaults or offences against the individual which have no affect on the public order cannot be comprehended within the expression public order. The maintenance Public Order has to be construed with reference to the prevention of the disorder of a grave nature than compared to law and Order, the degree of disorder of which is comparatively of lesser gravity having local insignificance only.

40. Therefore, each case has to be decided on its own facts and impact of such acts on the public life and whether they travel beyond the reach, of the normal penal laws have to be considered. Even though some of the acts are covered by the provisions of the Indian Penal Code or Code of Criminal Procedure, it is not necessary that the persons committed such acts should be proceeded under the respective provisions. Even in cases where the persons are acquitted or the prosecutions are pending or whether prosecution is not feasible for various acts of the person, the detention Order can be validly passed.

Interpretation of term "Goonda" and its reach:

41. The definition of "**Goonda**" is contained under Section 2(g) of the Act. We have already extracted the definition and the connected expressions namely "**acting in any manner prejudicial to the public Order**". In order to specify a person as a "**Goonda**", the first requirement is that the said person is alleged to have habitually committed the offences falling within **Chapter XVI, XVII and XXII of Indian Penal Code**. Further, the acts alleged to have been committed ought to be prejudicial to the maintenance of the public order. It is only on satisfying these conditions, it is

open for the appropriate authority to issue Orders of detention preventing him from acting in any manner prejudicial to the maintenance of the public order, which encompasses the acts covered by the explanation also namely causing or calculated to cause any harm danger or feeling of insecurity among the general public or any section therefore or a grave or widespread danger to the public health.

42. The question that calls for consideration is whether the person who is alleged to have committed the offences other than those covered by the **Chapters XVI, XVII and XXI of IPC**, can be said to fall within the definition of "**Goonda**".

43. The learned Senior Counsel Mr. C. Padmanabha Reddy vehemently submits that the expressions in penal law have to be interpreted very strictly and it is not open for the Court either to delete or add any words the Legislation. Therefore, it is only when the person is alleged to have committed the offences specified in three chapters, he would fall within the definition of "**Goonda**" and if he commits any offences other than those falling outside the aforesaid chapters, he cannot be brought into the definition of "**Goonda**" and the detaining authority cannot exercise the power of detention on the premise that he falls within the definition of "**Goonda**". He refers to the decision of the Supreme Court reported in Musthakmiya's case (7th cited supra). In the said case, the detention Order was issued under Sub-section 1 of Section 3 of Gujarat Prevention of Anti-Social Activities Act.

44. The expression "**dangerous person**" has already been extracted in the preceding paragraphs. However, Section 3 of the Act is reproduced below for appreciation of the case.

> "**3. (1)** The State government may if satisfied with respect to any person that with a view to preventing him from acting in any manner, prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
>
> **(2)** If, having regard to the circumstances prevailing or likely to prevail in any

area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in Ss. (1 exercise the powers conferred by the said sub-section.

(3)* * *

(4) For the purpose of this section, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is engaged in or is making preparation for engaging in any activities whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

EXPLANATION.- For the purpose of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this Ss. directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health.

The Supreme Court referring to the Preamble of the said Act observed in paras 7 and 8 thus:

"**7.** A reading of the preamble of the Act will make it clear that the object of provisions contained in the Act including those reproduced above is to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Section 3 of the Act is, therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them. But this power under the Act to detain a person should be exercised with restraint and great caution. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is a "dangerous person" within the meaning of Section 2(c) of the Act who habitually commits, or attempts to commit or abets the commission of any of the offences

punishable under Ch. XVI or Ch. XVII of the Penal Code or any of the offences punishable under Ch. V of the Arms Act as according to Ss. (4) of Section 3 of the Act it is such "dangerous person" who for the purpose of Section 3 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" against whom an order of detention may lawfully be made.

8. The Act has defined "dangerous person" in clause (c) of Section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Ch. XVI or Ch. XVII of the Penal Code or any of the offences punishable under Ch. V of the Arms Act, The expression 'habit' or 'habitual' has however, not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. 1987, p. 499, 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn., p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalanachari v. State of Kerala (AIR 1981 S.C. 674) this court had an occasion to deal with expressions like "bad habit", 'habitual', 'desperate', 'dangerous', and 'hazardous'. This court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar (1984(3) S.C.C. 14) this court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a person within the expression "dangerous person" as defined in clause (c) of Section 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Ch. XVI or Ch. XVII of Indian Penal Code or under Ch. V of the Arms Act and that a single or isolated act falling under Ch. XVI or Ch. XVII of Indian Penal Code or Ch. V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act." **(emphasis added)**

Therefore, the Supreme Court has made it clear that a single or an isolated act cannot be characterised as a habitual act. Further, with reference to **Chapter XVI and XVII of IPC**, the Supreme Court observed as follows:

> "An offence under S. 212/214 of the Indian Penal Code cannot be made a basis for passing an order of detention against the petitioner as the said offence does not fall either under Ch. XVI or Ch. XVII of the Indian Penal Code. In order to bring a person within the definition of Section 2(c) of the Act it is essential to show that such person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Ch. XVI or Ch. XVII of the Indian Penal Code or any of the offences punishable under Ch. V of the Arms Act. But as pointed out earlier the offence registered against petitioner under FIR of CR No. 7 of 1994 of DCB dated 11/4/1994 is one under S. 212/214 of the Indian Penal Code which falls under Ch. XI of the Indian Penal Code and not under any of the Ch. XVI or XVII which is the requirement of Section 2(c) of the Act. This incident, therefore, cannot be made a basis for satisfaction of the detaining authority that petitioner is a habitual offender, so as to sustain the order of detention." **(emphasis added)**

Thus, the Supreme Court has categorically observed that any offence not covered by **Chapters XVI and XVII** cannot be made basis for the satisfaction of the detaining authority to issue detention Order.

45. The learned Advocate General, however, submits that it is not necessary that the offence alleged to have committed by the detenu should necessarily fall within the definition of **Chapters XVI, XVII and XXII of IPC** and that any offence or act prohibited by law can be made as a ground for issuing detention Order. He further submits that if a person is committing offence of "theft or dacoity" or murder which fall within the aforesaid chapters and he commits the said offences with daggers, fire arms, explosive substances, mere mention in the grounds that he has also committed the offence under the respective Acts cannot by itself vitiate the Order of detention. Necessarily, a person who commits a murder with firearm or other contrivances, and use of which is an offence under the other Acts and reference to those offences are only ancillary and they cannot vitiate the Order of detention. He takes the assistance from the judgment of the Supreme Court reported in

BORJAHAN GOREY Vs. THE STATE OF WEST BENGAL. In the said case, the Order was passed under Sub-section 3(1) and 3(2) of the Maintenance of Internal Security Act and National Security Act. Under Section 3 of Maintenance of Internal Security Act, it is open for the Central Government or the State Government to issue Orders of detention. Section 3 reads thus:

> **"3. Power to make Orders detaining certain persons-(1) The Central Government or the State Government may-**
>
> (a) if satisfied with respect of any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to-
>
> (i) the defence of India, the relations of India with foreign powers, or the security of India, or
>
> (ii) the security of the State or the maintenance of public order, or
>
> (iii) the maintenance of supplies and services essential to the community, or;
>
> (b) xxx xxx xxx
>
> **(2) to (4)** xxx xxx xxx"

46. Therefore, in the aforesaid provision, broad spectrum of expression maintenance of public order or security of the State was referred to. The contention raised before the Supreme Court was that the basis of which the impugned detention order has been made, disclosed facts which would squarely fall within the purview of Sections 109 and 110 of the Code of Criminal Procedure and, therefore, the petitioner should have been appropriately proceeded against under those sections rather than detained under Section 3 of the Act. The Supreme Court observed:

> "Our attention was not drawn by the learned counsel to any statutory provision, nor was any precedent or principle cited by him in support of this contention."

The Supreme Court observed that merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure, would not by itself debar the Government from taking action for his detention under the Act. It observed that the preventive detention provided by the

Act was apparently designed to deal urgently and effectively with the more serious situation, inter alia, affecting the security of India and the maintenance of public order as contemplated by Section 3 of the Act. The Supreme Court further observed thus:

> "The liability of the detenu also to be tried for commission of an offence or to be proceeded against under Chapter VIII of the Code of Criminal Procedure which deals with prevention of less serious disturbances and requires execution of bonds on the basis of the acts disclosed in the grounds do not in any way as a matter of law affect or impinge upon the full operation of the Act. The reason is obvious. Judicial trial for punishing the accused for the commission of an offence as also preventive security proceedings in a criminal court against a person merely for keeping the peace or for good behaviour under Chapter VIII of the Code of Criminal Procedure, we may appropriately point out, is a jurisdiction distinct from that of detention under the Act, which has in view, the object of preventing the detenu from acting in any manner prejudicial inter alia to the security of the State or maintenance of public order. The fields of these two jurisdictions are not co-extensive nor are they alternative. The jurisdiction under the Act may be invoked when the available evidence does not come up to the standard of judicial proof but is otherwise cogent enough to give rise to suspicion in the mind of the authority concerned that there is a reasonable likelihood of repetition of past conduct which would be prejudicial inter alia to the security of the State or the maintenance of public order or even when the witnesses may be frightened or scared of coming to a court and deposing about past acts on which the opinion of the authority concerned is based. This jurisdiction of suspicion founded on past incidents and depending on subjective satisfaction. The jurisdiction for trial or for preventive proceedings under Chapter VIII, Code of Criminal Procedure cannot be successfully invoked in such a situation. In other words a case under the Code of Criminal Procedure whether punitive or preventive depends on the proof of objective facts which have already taken place whereas a case under the Act providing for preventive detention depends on the subjective satisfaction of the authorities concerned of the likelihood of the person to be detained to act in future in a manner similar to the one seen from his past acts. The authorities mentioned in S.3 (2) which include the District Magistrate are, in our view, best suited to decide whether it is necessary to proceed under the Act which decision rests on their subjective satisfaction. The grounds of detention relate to the past acts on which the opinion as to the likelihood of the repetition of such or similar act is based and those grounds are furnished to the detenu to inform him as to how and why the subjective satisfaction has been arrived as so as to enable him to represent against them. The fact, therefore, that a prosecution under the Code could also have been launched is not a valid ground for saying that it precludes the authority from acting under the Act. This contention is thus devoid of merit. We have discussed this aspect somewhat elaborately so as

> to eliminate any misunderstanding of the true import of our decision and to exclude the possibility of any impression that the Act vests in the authority arbitrary power to select one or the other course dealing with the same or exactly similar situation."

47. The learned Advocate General, taking further assistance from the decision of the Supreme Court reported in MASOOD ALAM Vs. UNION OF INDIA submits that the relevancy of the grounds mentioned in the detention order must be construed with reference to the alleged illegal activities of the detenu. Merely an extraneous ground is mentioned, which will fall outside the offences under **Chapter XVII, XVIII and XXII**, it cannot be said that the ground is irrelevant and extraneous. The learned Advocate General submits that the Supreme Court in the aforesaid case has taken into consideration the activities of the petitioner, which was prejudicial to the security of India and security of the State and Maintenance of Public Order within the purview of provision Chapter VIII of the Civil Procedure Code. Therefore, mere reference to the other unrelated provisions will not be fatal to the detention Order.

48. In the aforesaid case, the detention Orders issued in respect of two persons one is Masood Alam, and another Abdul Bari Qairanvi were challenged. As far as Masood Alam was concerned, the detention Order was issued on 15.6.1972, but, however, since the Government did not approve the same, he was released on 25.6.1972 at 23-50 hours and again he was taken into custody on the same day immediately thereafter and he was detained in jail as under-trial prisoner under Section 107/117 Cr.P.C. Thereafter, fresh detention Order was passed on the same day i.e. 25.6.1972 under Section 3(1) of the Act. The contentions raised on behalf of the petitioner was that once the detention order was revoked and again he was taken into custody by virtue of the fresh detention order, it shows *mala fides* on the part of the detaining authority. But, this contention was negatived on the ground that in the return file by the Government of Uttar Pradesh, it was stated that the petitioner was arrested on 15.6.1972 under Section 107/117 and 151 Cr.P.C. and the Order of detention was also served on him by the District Magistrate on the same date. The Orders for his release were issued by the District Magistrate under the provisions of

Maintenance of Internal Security Act, but he continued in jail under Section 107/117/151 Cr.P.C. Thus, as on the date when the later detention order, was revoked already he was arrested by virtue of the arrest order passed on 15.6.1972. Rejecting the contention on the validity of the Order, the Supreme Court observed thus:

> "This contention ignores para 3 of the grounds in which it is clearly stated that the District Magistrate was satisfied that the petitioner was likely to act in a manner prejudicial to the security of India, security of the State and maintenance of public order and that with a view to preventing him from so acting, it was necessary to detain him. The submission that the use of the word 'likely' in this para only brings the petitioner's case within the purview of the provisions of Chapter VIII (Security Proceedings) of the Criminal Procedure Code thereby justifying only proceedings under S. 107 of the Code and that an order of detention in such circumstances is an abuse and misuse of the provisions of the Act has only to be stated to be rejected. If the grounds are relevant and germane to the object of the Act then merely because the objectional activities covered thereby also attract the provisions of Ch. VIII, Cr. P.C. the preventive detention cannot for that reason alone be considered to be mala fide provided the authority concerned is satisfied of the necessity of the detention as contemplated by the Act : (**see Sahib Singh Duggal v. Union of India, (1966) 1 SCR 313 = (AIR 1966 SC 340) Mohammad Salim Khan v. C. C. Bose, AIR 1972 SC 1670 and Borjahan Gorey v. State of W. B. AIR 1972 SC 2256)**. The jurisdiction of preventive detention sometimes described as jurisdiction of suspension depends on subjective satisfaction of the detaining authority. It is designed to prevent the mischief from being committed by depriving its suspected author of the necessary facility for carrying out his nefarious purpose. This jurisdiction is thus essentially different from that of judicial trials for the commission of offences and also from preventive security proceedings in criminal Courts, both of which proceed on objective consideration of the necessary facts for judicial determination by Courts of law and justice functioning according to the prescribed procedure. Merely because such jurisdiction of Courts can also be validly invoked does not by itself exclude the jurisdiction of preventive detention under the Act. The earlier order, therefore, cannot be described to be either illegal or mala fide on this ground. Although the petitioner's present detention is founded on the order dated June 25, 1972 the earlier order was challenged with the sole object of showing that the present detention is also mala fide because the authorities are determined to keep the petitioner in custody irrespective of the existence or non-existence of valid grounds. We are not impressed by this submission and are unable to hold that the circumstances in which the earlier order was made in any way suggest mala fides on the part of the detaining authority in making the second order.

5. Regarding the second order also it has been suggested that there is no imminent likelihood of the petitioner acting in a prejudicial manner and that his detention is thus an abuse or misuse of the power of detention conferred by the Act. The scheme of our Constitution with respect to the fundamental right of personal liberty and the protection guaranteed against arrest and detention of the individual is intended to be real and effective, says the counsel, and adds that preventive detention of a person for any reason short of imminent likelihood of his acting in a prejudicial manner must be considered to be an invasion of this right. Our Constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. But the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedoms and personal liberty is designed to grow and flourish. The larger interests of our multi-religious nation as a whole and the cause of preserving and securing to every person the guaranteed freedoms peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardise the rightful freedoms of the rest of the society. These restrictions within the constitutional limits have to be trully effective if the detaining authority is of opinion on grounds which are germane and relavant, that it is necessary to detain a person from acting prejudicially as contemplated by S. 3 of the Act then it is not for this Court to consider objectively how imminent is the likelihood of the detenu indulging in these activities. This submission is thus unacceptable."

The Supreme Court further observed thus:

"The power of preventive detention being an extraordinary power intended to be exercised only in extraordinary emergent circumstances the legislative scheme of Sections 13 and 14 of the Act suggests that the detaining authority is expected to know and to take into account all the existing grounds and make one order of detention which must not go beyond the maximum period fixed. In the present case it is not urged and indeed it is not possible to urge that after the actual expiry of the original order of detention made by the District Magistrate, which could only last for 12 days in the absence of its approval by the State Government, any fresh facts could arise for sustaining the fresh order of detention. The submission on behalf of the State that the petitioner's activities are so highly communal and prone to encourage violent communal activities that it was considered absolutely necessary to detain him in the interest of security of the State and maintenance of public order cannot prevail in face of the statutory restrictions and the guaranteed constitutional right which is available to all persons. The rule of law reigns supreme in this Republic and no person on the soil of free India can be deprived of his personal liberty without the authority of law. As observed by this Court in Manu Bhushan v. State of West Bengal, W. P. No. 252 of 1972, D/- 31-10-1972 = (reported in AIR 1973 SC 295) :

> ".....The Act encroaches on the highly cherished right of personal liberty by conferring on the executive extraordinary power to detain persons without trial by coming to subjective decisions. The detaining authority in exercising this power must act strictly within the limitations this Act places on its power so that the guarantee of personal liberty is not imperilled beyond what the Constitution and the law strictly provide. The limited right of redress conferred on the detenu under the law deserves to be construed with permissible liberality with the provisions of the Act and the constitutional guarantee." On behalf of the respondent reference was also made to Sampat Prakash v. State of J. and K., (1969) 3 SCR 574 = (AIR 1969 SC 1153) dealing with detention under J. and K. Preventive Detention Act (J. and K. Act 13 of 1964). Though in that Act there is a similar provision (Section 14 (2) of that Act) in the judgment there is no reference to that section and it appears that no question similar to the one raised before us was argued and adjudicated upon there. We have, therefore, no option but to order the petitioner's release which we did on December 20, 1972. As the detention order is being quashed on this ground we do not consider it necessary to express any opinion on the point that the detention order is vitiated because some of the grounds on which it is based, though not of unessential nature, are vague." **(emphasis added)**

With regard to Abdul Bari Qairanvi, another contention raised was that the grounds were irrelevant and therefore, the detention was void. The Supreme Court observed thus:

> "In our opinion none of the grounds on which the petitioner's detention has been ordered can be said to be irrelevant. The facts stated in the grounds have to be accepted as correct and it is not open to this Court to enquire into their truth like a Court of appeal. Writ proceedings cannot be treated as an appeal in disguise…….
>
> An attempt has undoubtedly been made on behalf of the petitioner to show that the grounds on which the District Magistrate felt satisfied are non-existent but as observed earlier it is not open to this Court to review and override the subjective opinion of the District Magistrate by going into the truth or otherwise of the facts accepted by him."

The Supreme Court further observed that the grounds mentioned in the Order of detention are relevant and germane to the object, which is sought to be achieved by

virtue of Section 3 for the purpose of detaining persons, who are likely to act in a manner prejudicial to the security of the State or maintenance of the Public Order.

49. Maintenance of Internal Security Act empowers the detaining authority to issue the Order of detention under Section 3. There is no specific mention with regard to the alleged illegal acts with reference to the other enactments. Therefore, the wider discretion is given to the detaining authority to refer to various Acts to form an opinion that the activities of the persons are prejudicial to the maintenance of the security of India and security of the State and public Order.

50. In the instant case, the expression "**Bootlegger**", "**Goonda**" etc. have been specifically defined in the Act in order to bring a person within the definition of "**Goonda**", the Legislature has stipulated clear parameters to the effect that he should have committed the offences falling under **Chapters XVI, XVII and XXII of IPC.** The penal laws have to be implemented strictly and there cannot be any play in the joints. The express enactment shuts the door to further implications. (See:**WHITEMAN Vs. SADLER 1910 A.C. 514**) . No inference is proper if it goes against the express words Parliament has used. (*Expressum facit cessare tacitum*).

51. In Dickenson Vs. Fletcher 1873 L.R. 9 C.P.1, Maxwell J, said "that the strict construction of penal statutes seem to manifest itself in four ways":

a) in the requirement of express language for the creation of an offence

b) in interpreting strictly words setting out the elements of an offence.

c) in requiring the fulfilment of the letter of statutory conditions precedent to the infliction of punishment and

d) in insisting on the strict observance of technical provisions concerning Criminal Procedure and jurisdiction.

Though preventive law stands on a different footing than the penal law, but yet, the impact of farmer law cannot be more than that of later law. The liberty of a citizen is curtailed temporarily by invoking exceptions under Article 22 of the Constitution of India. The Supreme Court has time and again cautioning thus:

> "The power of preventive detention being an extraordinary power shall be invoked only in extra ordinary emergent circumstances. The Act encroaches on the highly cherished right of personal liberty. Therefore, the detaining authority in exercise of the power must act strictly within the limitation of the Act."

52. In the words of **Lord Justice James** speaking for the Privy Council stated that "no doubt all penal statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip that there has been a ***casus omissus;*** that the thing is so clearly within the mischief that it must have been included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But, where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other enactment. **(See: Dyke v. Elliot (1872) L.R. 4 P.C. 184.)**

53. **STORY, J.** stated "penal statutes are not to be enlarged by implication or extended to cases not obviously within their words and purport. But, where the words are general, and include various classes of persons, I know of no authority, which would justify the Court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute, which has various known significations, I know of no rule, that requires the Court to adopt one in preference to another, simply because it is more restrained, if the objects of the

statute equally apply to the largest and broadest sense of the world **(See: United States v. Winn, 3 Sumn 209 (Extracted from Principles of Interpretation of Statutes – Justice G.P. Singh – 8th Education P.702).**

54. As we have seen from the definition, the Legislature has only included the offence under three chapters and advisedly did not include the offences falling under other chapters of Indian Penal Code or other offences falling in other enactments. Therefore, it is beyond province of the Court to create new offences. These are within the exclusive province of the Legislature.

55. We also find that it is not appropriate to stretch the definition of "**Goonda**" so as to include all the offences falling in various enactments other than Indian Penal Code. The Supreme Court observed in Amrit Lal Manchanda's case (3rd cited supra), thus:

> "Cases involving challenges to orders of detention before and after execution of the order stand on different footings. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute it may became necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton, 1951 AC 737 at p. 761, Lord Mac Dermot observed :
>
> > "The matter cannot, of course, be settled merely by treating the *ipsissima vertra* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

56. Let us test the contention of the learned Advocate General. Can it be said that a person could be called "**Goonda**" if he commits the offence under the Anti

Corruption Laws or the Forest Act, Excise Act, Arms Act, Explosive Substances Act, the answer should be only in negative. The object of the enactment is to prevent six classes of persons viz. **"Goondas", "bootleggers"** etc. as defined in the Act from acting in any manner prejudicial to the maintenance of Public Order including those acts covered by explanation to Section 2(a) of the Act. Therefore, the expression "**Goonda**" has to be interpreted only with reference to the offences covered by three chapters contained in the said definition and none-else. Otherwise, it leads to anomalous results and confers unfettered power on the detaining authority, which is not the intention of the Act.

57. The decisions relied on by the learned Advocate General were rendered with reference to the provisions of the Maintenance of Internal Security Act where the said Act did not contain these specific provisions and greater latitude was given to the authority for obvious reasons. The Maintenance of Internal Security Act did not specify particular category of persons having committed offences of specific nature. But, in the present Act, each category of person has been defined in clear and unambiguous terms. Hence, we cannot approve the interpretation sought to be attached by the learned Advocate General on the basis of the decision of the Supreme Court referred to above.

58. A Division Bench of this Court in BOYA CHINNA SUBBARAYUDU Vs. THE COLLECTOR & DISTRICT MAGISTRATE, KUNROOL, observed in paras 5 to 7 thus:

> "**5**. What is now sought to be explained in the counter affidavit with regard to the injurious effect of the fusel oil was not mentioned in the grounds.
>
> **6.** Boot-legger is defined by Section 2(b) in the following terms:
>
> > "Boot-legger" means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the Rules, notifications and Orders made thereunder, or in contravention of any

other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or though any other person, or who abets in any other manner the doing of any such thing."

Everyone who answers the description of boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public Order" (vide Section 3(1)). The words "acting in any manner prejudicial to the maintenance of public Order" are defined by Section 2(a) as meaning "when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of pubic Order". The explanation to clause (a) of Section 2 says:

"For the purpose of this clause public Order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".

It is, therefore, clear that a person who is boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the Orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public Order. In other words only if the activities of the boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot-legger sells illicitly distilled arrack, which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.

7. The question to be considered is whether selling of illicit arrack itself is an at which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative, unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no Order of detention can be issued under Section 3 of the Act."

The Division Bench was dealing with the detention Order passed under Section 3 (2) of Act, 1986 (The A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers At

(1 of 1986).

59. In Amanulla Khan's case (20th cited supra), the detention Order was passed under the Gujarat Prevention of Anti Social Activities Act, 1985 (P.A.S.A.) was challenged. In P.A.S.A. the expression "dangerous person" was defined thus:

> "To be a person who either by himself or as a member or leader of a gang, during a period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959."

It was contended that single incident in Crime No.36 of 1997 under Section 120-B, 387 and 506(2) IPC will not be sufficient to issue detention Order. It was found that apart from the crime referred to above, he was involved in two other cases. The Supreme Court observed thus:

> "We, therefore, fail to appreciate the first contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a "dangerous person" is based upon the solitary incidence in respect of which a criminal case has already been registered. In our considered opinion the detaining authority has considered the three different incidents happened on three different dates and not a solitary incidence and, therefore, the test of repeatedness or continuity of the activity is fully satisfied and the satisfaction of the detaining authority holding the detenu to be a "dangerous person" is not vitiated in any manner. The contention of the learned counsel for the petitioner therefore stands rejected."

60. In Ahmed Hussain's case (18th cited supra), the Supreme Court held thus:

> ".....In the instant case, the material disclosed is quite vague with reference to the persons affected or victimised as also the time and place of such victimisation. This Court has on several occasions indicated that there is a wide gap between law and order and public Order. The criminal offence may relate to the field of law and order but such an offence would not necessarily give rise to a situation of public order. Depending upon peculiar situations an act which may otherwise have been overlooked as innocuous might constitute a problem of public order. Selling of liquor by the petitioner would certainly amount to an offence under the Prohibition Act, but without something more would not give rise to a problem of public order. Similarly,

commission of any other criminal offence-even assault or threat of assault – would not bring the matter within the ambit of public Order."

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62. The learned Advocate General relied on the decision of the Division Bench of this Court in KUNTRA PAKAM NAGAMMA Vs. THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE, CHITTOOR (W.P.No.12534/04, dated: 26.10.2004). We find from the Order, this point was not in issue and it was observed by the Division Bench that offence under Section 20 of Forest Act can also be an offence under Section 379 IPC. Further, the Writ Petition was allowed only on the ground that there was no satisfaction of the detaining authority that the activities of the detenu were prejudicial to the public order. Hence, the decision does not apply to the issue

under discussion.

CONCLUSIONS:

63. Therefore, in order to successfully issue an Order of detention on the basis of that a person is a "**Goonda**" falling within the definition of Section 2(g), it must be established that he had only committed the offence falling under Chapters XVI, XVII and XXI of IPC, that he should have committed the said acts habitually and that the acts committed must conform to the provisions contained in Section 3 read with Section 2(A) of the Act.

GROUNDS OF POLITICAL RIVALRY

64. As already discussed above at length, the acts alleged to have been committed by the detenu are relevant for the purpose of considering the validity of the detention Order. The individual role, behavioural attitude and prognostic proposensthis have to be considered. Even if the offences were committed in retaliation/reprisal for political rivalry, still its impact and potentiality affecting public order in the sense that if it was aimed at bringing about disorder and chaos upsetting the even tempo of life in that locality, the Order cannot be interfered with.

65. Let us apply the above principles with reference to the individual cases on hand.

66. In **W.P.No. 17997 of 2004**, the Order of detention was issued on 28.9.2004 with the following grounds:

> 1. **Tadpatri Town P.S. Cr. No. 151/03 u/s. 147, 148, 324, 427 IPC and Sec. 7(i) Crl. Law Amdt. Act:-** On 26.9.2003 at 10-00 a.m. at Srenivasapuram of Tadpatri town you, Sangati Ravindra Reddy @ Potti Ravi along with 32 others armed with sticks, formed yourselves into an unlawful assembly and proceeded to the petty hotel cum house of the complainant P. Swamy Bayapa Reddy and demanded to close his petty hotel in connection with bundh call given by Congress (I) party and also damaged two stone slabs and also tube lights of name broad of the hotel and bet the complainant and his mother with sticks due to not closing his hotel on bundh day. You S. Ravindra Reddy @ Potti Ravi was arrested on 29.9.2003 and sent for

remand. Later, you were released on bail. The case is under investigation.

2. **Tadpatri Town P.S. Cr. No. 153/2004 u/s. 147, 148, 324, 427 IPC and Sec. 7(1) Crl. Law Amdt. Act:-** On 26.9.2003 at 11-30 a.m. you, Sangati Ravindra Reddy @ Potti Ravi along with 55 others formed yourselves into an unlawful assembly in connection with the bundh cal given by the Congress (I) party and trespassed into the stone factory of Chinna Chenna Reddy father-in-law of the complainant P. Ramachandra Reddy and highhandedly damaged the motor cycle bearing number AP. 02.9639 belonging to the complainant and also abused the complainant's father-in-law and went away. You S. Ravindra Reddy @ Potti Ravi was arrested on 29.9.2003 and sent for remand. Later, you were released on bail. The case is under investigation.

3. **Tadpatri Town P.S. Cr. No. 154/03 u/s. 143, 427 IPC:-** On 26.9.2003 at 10-30 a.m. at Srenivasapuram of Tadpatri town you, Sangati Ravindra Reddy @ Potti Ravi along with 36 others formed yourselves into an unlawful assembly armed with sticks proceeded near the house of the complainant P. Chandra Sekhar Reddy inconnection with bundh call given by Congress (I) party and highhandedly damaged the Tata Sumo vehicle of the complainant bearing No. AP.02.U.5587 and when the mother-in-law of the complainant intervened and she was also abused and assaulted. You S. Ravindra Reddy @ Potti Ravi was arrested on 9.10.2003 and sent for remand. You were later, you were released on bail. The case is under investigation.

4. **Tadpatri Town P.S. Cr. No. 155/03 u/s. 332, 324, 160 IPC and Sec. 7(i) Crl. Law Amdt. Act:-** On 26.9.2003 at 12-30 p.m. near Ashok Pillar of Tadipatri Town, you, Sangati Ravindra Reddy @ Potti Ravi along with 200 followers hurled stones on your opposition group in connection with the bundh call given by Congress I Party resulting in injuries to Police Officers on duty and violating the Orders promulgated under Section 144 Cr.P.C. by the Mandal Executive Magistrate, Tadipatri, reslting in the opening of fire by the Police. In this case, you were arrested on 29.9.2003 and sent for remand and later released on bail. Case is under investigation.

5. **Cr. No. 43/2004 u/s. 147, 148, 324, 307, 332, 435 r/w 149 IPC, 25(1b)(a) and 27 of Arms Act and Sections 3 and 5 of E.S. Act and Police firing of Tadipatri Town P.S:-** On 7.4.2004

at 1-00 p.m. near C.B. Road in Tadpatri town you, S. Ravindra Reddy @ Potti Ravi along with 60 of your group persons formed into an unlawful assembly armed with deadly weapons like fire arms, explosive substances, soda bottles and stones etc. in connection with filing of nominations to A.P. Legislative Assembly Elections indulged in clashes with your rival group due to political rivalry. In this sequence you have also set fire to 1 Jeep and 3 Motor Cycles. On account of the stone pelting 9 police personnel including the Dy. Superintendent of Police, sustained injuries and the grave situation was later brought under control only after the arrival of additional forces, including opening of fire by the Police. You S. Ravindra Reddy @ Potti Ravi obtained anticipatory bail from the High Court and surrendered before the Court on 24.4.2004 and released on bail. The case is under investigation.

6. **Cr. No. 45/2004 u/s. 147, 148, 324, 307, r/w 149 IPC, 25(1b)(a) and 27 of Arms Act and Sections 3 and 5 of E.S. Act and Police firing of Tadipatri Town P.S:-** On 7.4.2004 at 12-00 noon near the house of Surya Prathapa Reddy (Ex.M.L.A.) at Tadpatri town you, S. Ravindra Reddy @ Potti Ravi along with you group of 60 persons formed into an unlawful assembly armed with deadly weapons like explosive substances, soda bottles, knives and stones etc. in connection with filing of nominations to A.P. Legislative Assembly Elections indulged in clashes with your rival group due to political rivalry and caused injuries to the complainant H. Parameshwaraiah and 8 others, in addition to police personnel on duty. The situation was brought under control by opening of fire by Police. You S. Ravindra Reddy @ Potti Ravi obtained anticipatory bail from the High Court and surrendered before the Court on 24.4.2004 and released on bail. The case is under investigation."

It is the contention of the learned Senior Counsel that fore incidents were alleged against the detenu on 26.9.2003 and two incidents were alleged on 7.4.2004 and ground no. 1 to 3 relates to offences against individuals and ground No.4 relates to Section 144 Cr.P.C. The learned counsel would submit that ground No.5 and 6 relates to alleged offences falling under the aforesaid chapters and also other than those chapters namely reference to Section 25(1)(b) of Arms Act and 27 of Arms Act and Sections 3 and 5 of Explosive Substances Act and thus he submits that irrelevant grounds were taken into consideration to bring the detenu within the definition of **"Goonda"**. The learned Advocate General, however, opposes the same. It is always open for them to refer to the provisions other than those

mentioned in Section 2(g) of the Act.

67. For the foregoing discussions, we are unable to accept the contention of the learned Advocate General.

68. Firstly, the offence other than **Chapters XVI, XVII and XXII of Indian Penal Code** cannot be taken into consideration for bringing a person within the definition of "Goonda" and secondly, it is highly improbable as to which of the offences influenced the mind of the detaining authority to arrived at subjective satisfaction to issue the detention Order. When detention Order is composed, all relevant and irrelevant grounds, it does not survive to the extent of relevant grounds and the entire detention Order falls to ground. Therefore, we are of the considered view that the Order is not sustainable and accordingly it is set aside and the detenu shall be released forthwith, if he is not required in any other case.

69. In **W.P.No. 18059 of 2004**, the Order of detention passed by the District Magistrate dated: 20.9.2004 is assailed. The following are the grounds basing on which the Order of detention was issued.

> **a)** On 17.4.2004 information under Section 107 Cr.P.C. laid before RDO, Anantapur against you and 10 of your associates and your opponent group leader Mekala Sreenath Gowd and 10 of his followers as there is likely breach of peace and indulged in criminal cases. You were bound over for the period of 1 year for keeping good behaviour with a surety of Rs. 50,000/- each vide M.C.No.20/2004, dated: 24.4.2004.
>
> **b)** On 20.05.2004 in between 2.30 p.m. to 3-30 p.m. at K.K. Agraharam village wherein Nagaraju and yourself along with 18 others of your followers formed themselves into an unlawful assembly, armed with sticks, sickles and country made bombs, attacked the deceased Pulla Sivaiah s/o Pedda Katamaiah, 20 years of K.K. Agraharam village while he was chit chatting with Nallappa at Rachabanda, and inflicted multiple injuries on his head and face as a part of taking vengeance to the murder of Kalaguri Bhusappa in the hands of the deceased and his associates that occurred on 22.03.2004. After inflicting injuries, the deceased ran towards his house where by the wife,

mother and 2 other relatives took the deceased in a bullock cart in order to provide him medical treatment. When the bullock cart approached the house of Talari Narayanaswamy in Boya street you and 5 of your associates again attacked the deceased and inflicted bleeding injuries on his person with sickles and when the wife and mother of the deceased tried to rescue the deceased, yours associate Ramana Reddy beat the mother and wife of the deceased with an iron rod and thereby caused simple injuries on their person. Then after inflicting injuries on the deceased, his mother and wife went to the house of Ediga Sreenath Gowd by raising cries and with the common intention to doing away with the life of their rival, you and your associates hurled bombs which exploded without any casualty. In this case you were arrested on 25.5.2004 and sent for judicial custody.

c) As the situation in your village is highly tense due to your faction, an armed picket is being continued in your village to avoid further clashes and bloodshed. "When you are in judicial custody in District Jail, situated Reddypalli (v) of B.K. Samudram(m) (just 20 K.Ms. away from your village) in Collector.No.76/04 under Section 147, 148, 324, 307, 302 r/w 149 IPC and Sections 3 and 5 of E.S. Act of B.K. Samudram P.S. from 25.5.2004, on 24.7.2004, on your instigation and direction your followers under the leadership of Talari Sivaiah and 10 others, have cut down the 550 citrus trees of your rival leader Mekala Sreenath Gowd at K.K. Agraharam (v) and caused heavy damage to him. This is subject matter of Crime No. 103/04 under Section 147, 48, 447, 428 r/w 149 IPC of B.K. Samudram P.S. After this incident of trees cutting the situation in the village has become more violent and spread like volcano and it may burst any time in the village leading to heavy loss of life and property"

70. The learned Senior Counsel would at the threshold submits that the 1st ground itself is an irrelevant ground, in asmuch as the security proceedings initiated cannot be considered as substantial ground for issuing the Order of detention. Further, he also submits that in other grounds, not only the offences falling under **Chapters XVI, XVII and XXII of Indian Penal Code** were mentioned, but also other provisions under the Explosive Substances Act were also taken into consideration. Therefore, we are of the considered view that the Order of detention is not sustainable in asmuch as, irrelevant and extraneous grounds were taken into consideration. Accordingly, the detention Order is set aside and the detenu is released forthwith, if he is not required in any other case.

71. In **W.P.No. 18132 of 2004**, the Order of detention was issued on 17.9.2004 on the ground that the detenu was a "**Goonda**". Answering to the definition of 2(g) of the Act, seven grounds were mentioned.

72. Out of seven grounds, the detaining authority himself has categorised as ground no.1 to 6 as old cases and ground No.7 is a current case. We need not consider the validity of the Order of detention on all the grounds. Suffice it to say that the 1st ground relates to the incident that had taken place on 12.3.1998 and the Order of detention was issued in 2004 nearly after a lapse of 6 years. Therefore, as held by the Supreme Court in catena of cases referred to above, the 1st ground is a stale ground neither it has proximity nor continuity to sustain the plea of subjective satisfaction of the authority. Though the Order also suffers on the ground that other offences other than those mentioned in three chapters referred to above, we are not inclined to consider those grounds in asmuch as on the 1st ground itself is the Order is liable to be set aside. Accordingly, the detention Order is set aside and the detenu is released forthwith, if he is not required in any other case.

73. Accordingly, all the Writ Petitions are allowed. No costs.

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G.BIKSHAPATHY, J

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CH. S.R.K.PRASAD, J

24-11-2004

CHV

L.R. COPY TO BE MARKED: Yes

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the twenty fourth day of November Two thousand and four.

Assistant Registrar

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